

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Robert Banks

v.

Civil No. 09-cv-326-JD

Mark Hall, et al.¹

O R D E R

Before the Court is Robert Banks' complaint (document nos. 1 & 8),² filed pursuant to 42 U.S.C. § 1983, alleging that the defendants, New Hampshire State Troopers, subjected him to excessive force during an October 11, 2008 arrest. The matter is before me for preliminary review to determine, among other things, whether or not Banks has stated any claim upon which relief might be granted. See 28 U.S.C. § 1915A; United States

¹Plaintiff has named the following New Hampshire State Troopers as defendants to this action: Mark Hall, Robert Lima, Dean Holston, Francesco Campo, Michael Cedrone, Gerard Ditolla, and Chad Lavoie. Plaintiff has also named as defendants State Police dog "Kia" and the New Hampshire Treasurer.

²Banks filed an initial complaint on September 23, 2009 (document no. 1). He then filed an amended complaint on November 24, 2009 (document no. 8), along with the motion to amend. I grant the motion to amend. The original complaint and the amended complaint will be considered, in the aggregate, to be the complaint in this matter for all purposes.

District Court District of New Hampshire Local Rule 4.3(d)(2) (authorizing the Magistrate Judge to conduct preliminary review of cases filed by pro se prisoners).

As fully explained in my Report and Recommendation, issued simultaneously with this Order, I direct service of Banks' Fourth Amendment claims of excessive force and failure to intervene against defendant State Troopers Mark Hall, Robert Lima, Dean Holston, Francesco Campo, Michael Cedrone, Gerard Ditolla, and Chad Lavoie. In my Report and Recommendation, I also recommended dismissal of the other claims and defendants in the complaint.

As I find that plaintiff has stated claims upon which relief may be granted, I order the complaint (document nos. 1 & 8) be served on defendants listed above. The Clerk's office is directed to serve the New Hampshire Office of the Attorney General (AG), as provided in the Agreement On Acceptance Of Service, copies of this order, the Report and Recommendation issued simultaneously herewith, and the complaint (document nos. 1 & 8). See LR 4.3(d)(2)(C). Within thirty days from receipt of these materials, the AG will submit to the court an Acceptance of Service notice specifying those defendants who have authorized the AG's office to receive service on their behalf. When the

Acceptance of Service is filed, service will be deemed made on the last day of the thirty-day period.


As to those defendants who do not authorize the AG's office to receive service on their behalf or whom the AG declines to represent, the AG shall, within thirty days from receipt of the aforementioned materials, provide a separate list of the last known addresses of such defendants. The Clerk's office is instructed to complete service on these individuals by sending to them, by certified mail, return receipt requested, copies of these same documents.

Defendants are instructed to answer or otherwise plead within twenty days of acceptance of service. See Fed. R. Civ. P. 12(a)(1)(A).

Plaintiff is instructed that all future pleadings, written motions, notices, or similar papers shall be served directly on the Defendants by delivering or mailing the materials to them or their attorneys, pursuant to Fed. R. Civ. P. 5(b).

Banks has filed a motion to amend his complaint (document no. 8), accompanied by an amended complaint and attachments. The motion is granted.

SO ORDERED.


James R. Muirhead
United States Magistrate Judge

Date: January 20, 2010

cc: Robert Banks, pro se

JM:jba